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Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ORIGINAL
FILED

07 JUL 24 PM 2:33

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

C07 03792 HRL
No.

DONALD MASTERS,

Plaintiff,

v.

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC CORPORATION 2000
LONG TERM INCENTIVE PLAN and DOES 1-
50,

Defendant.

DEFENDANT BOSTON SCIENTIFIC
CORPORATION'S NOTICE OF
REMOVAL

Defendant Boston Scientific Corporation ("Defendant"), which was sued in its own name and incorrectly as "Boston Scientific Corporation 2000 Long Term Incentive Plan," in *Donald Masters v. Boston Scientific Corporation, Boston Scientific Corporation 2000 Long Term Incentive Plan and Does 1-50*, filed as Case No. 107CV085180 in the Superior Court of the State of California for the County of Santa Clara, gives notice that this case is removed to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

I. JURISDICTION

1. For reasons set forth in greater detail below, this Court has jurisdiction over this action under 28 U.S.C. §§ 1332 and 1441. Jurisdiction exists pursuant to 28 U.S.C.

A/72098214.1/0088579-0000326656

§§ 1332 and 1441 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.

II. INTRADISTRICT ASSIGNMENT

2. Plaintiff Donald Masters ("Plaintiff") filed this case in the Superior Court of California, County of Santa Clara. Therefore, this case should be assigned to the San Jose Division of the Northern District of California. Civil L.R. 3-2(e).

III. COMPLIANCE WITH STATUTORY REQUIREMENTS

3. In accordance with 28 U.S.C. § 1446(a), attached as Exhibits A, B and C are true and correct copies of all process and pleadings filed or served in the state court in this action including: Plaintiff's Complaint, Plaintiff's First Amended Complaint, and Defendant's Answer. Plaintiff served Defendant with the First Amended Complaint on June 26, 2007. Accordingly, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

4. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly provide written notice of removal of this action to Plaintiff and will promptly file a copy of this Notice of Removal with the Clerk of the Superior Court of California in and for the County of Santa Clara.

IV. STATEMENT OF THE GROUNDS FOR REMOVAL

5. Defendant removes this case pursuant to 28 U.S.C. §§ 1332 and 1441 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.

6. Plaintiff is a citizen of California. *See* First Amended Complaint, attached hereto as Exh. B, ¶ 1. Plaintiff admits that Defendant is a Delaware corporation with its principal place of business in Massachusetts. *Id.* Exh. B, ¶ 2. Boston Scientific Corporation 2000 Long Term Incentive Plan is a sham or nominal defendant. *Id.* Exh. B, ¶ 3. The citizenship of the "Doe" defendants is irrelevant for purposes of removal based on diversity jurisdiction. 28 U.S.C. § 1441(a). Therefore, none of the defendants is a citizen of California and there is complete diversity between the parties.

7. Plaintiff seeks more than \$75,000 in damages. *See* First Amended Complaint, attached hereto as Exh. B, ¶ 1 of Prayer for Relief, p. 14.

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V. **CONCLUSION**

8. By removing this case, Defendant does not waive and is not estopped from raising any defenses that were available to it in state court. *See Clark v. Wells*, 203 U.S. 164, 171 (1906).

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant removes this case from the Superior Court of the State of California in and for the County of Santa Clara to the United States District Court for the Northern District of California.

DATED: July 24, 2007

Bingham McCutchen LLP

By: 

Thomas Kuhnle
Kristen M. Pezone
Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

EXHIBIT A

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BOSTON SCIENTIFIC CORPORATION, BOSTON SCIENTIFIC CORPORATION 2000 LONG TERM INCENTIVE PLAN and DOES 1-50;

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
DONALD MASTERS

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

2007 MAY -2 PM 4:13

KIRI TORRE
CLERK
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

UCS

S. GARCAYCO

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT
191 N. FIRST
SAN JOSE, CA 95113

CASE NUMBER
(Número del caso)

CV085180

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ROBERT B. NICHOLS ESQ.
3005. FLYST. CT #205
SAN JOSE CA 95128 (408) 298-9755

DATE:
(Fecha)

MAY 2 2007

KIRI TORRE
Chief Executive Officer/Clerk
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

ORIGINAL

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FILED Santa Clara Co
05/02/07 4:12pm
Kiri Torre
Chief Executive Office
By: seanmayco DTSCIVO
R#200700043626
CK \$320.00
\$320.00
Case: 1-07-CV-085180

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

DONALD MASTERS,
Plaintiff,

vs.

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC CORPORATION 2000)
LONG TERM INCENTIVE PLAN and DOES)
1-50,)
Defendants.)

Case No. 107 CV 085180

COMPLAINT

INITIAL COMPLAINT

I. JURISDICTION AND PARTIES

1. Jurisdiction in this action is founded upon complete diversity of citizenship pursuant to 28 U. S. C. 1332.

2. At all times relevant hereto, Plaintiff Donald Masters ("Mr. Masters") has been a resident of the State of California, County of Santa Clara.

3. At all times relevant hereto, Boston Scientific Corporation ("BSC") has been a Delaware corporation with its principal place of business in Massachusetts.

4. The primary Plan at issue in this dispute is the Boston Scientific Corporation 2000 Long Term Incentive Plan. ("2000 Plan " or "2000 Stock Option Plan"). Plaintiff believes the Plan is not a legal person, but, as a precaution, names it as a party.

1 5. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
2 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
3 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
4 Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named
5 defendants is responsible in some manner for the occurrences alleged herein, and that plaintiffs'
6 damages as herein alleged were proximately caused by their conduct. Included among the Doc
7 defendants are the BSC Board of Directors and any unnamed Committee or Committees which
8 acted as Administrator(s) of the 2000 Plan, and Human Resources personnel acting or designated
9 as Administrator for ministerial purposes only.
10

11 6. At all times relevant hereto, each of the defendants named herein was the agent and
12 employee of each of the other defendants, and in doing the things herein alleged, was acting
13 within the course and scope of such agency and employment and with the permission and
14 consent of its co-defendants.
15

16 II. VENUE

17 7. Venue lies in Santa Clara County, because Plaintiff resides in this County; Defendant
18 has offices and factories in and does business in this District; and some of the breaches alleged
19 occurred in this County. This action arises in Santa Clara County because it arose from
20 Plaintiff's employment with Defendant at offices then in Sunnyvale, Santa Clara, and Mountain
21 View, California; some of the breaches alleged occurred in Santa Clara County; a substantial part
22 of the omissions and events giving rise to Plaintiff's claim occurred in Santa Clara County; and
23 Defendant does business and can be found in Santa Clara County.
24

25 IV. FACTS; GENERAL

26 9. Mr. Masters is currently employed and in good standing with BSC, with whom he first
27 became employed in July 1994.

28 10. During his tenure at BSC, it has obtained 12 patents in the field of medical devices

1 for which he received credit as the inventor or co-inventor.

2 11. This dispute arises because of the interplay between changes in provisions of BSC's
3 Stock Option Plans and the less than 3 year period between January 2001 and December 2003
4 during which he did not work for BSC.

5
6 **V. FACTS**
GENERAL STOCK OPTION PROVISIONS

7 12. BSC has had at least 4 Stock Option Plans, adopted respectively in 1992, 1995, 2000,
8 and 2003. The terms of those Plans and the basis of Mr. Master's allegations herein are discussed
9 more fully at the end of this complaint. These plans were respectively referred to as Long Term
10 incentive Plans and are denominated by their year of adoption.

11 13. Under the Plans, a terminated employee lost all rights to grants within 6 months prior
12 to termination, lost all rights to options unvested on the date of termination, and lost all rights to
13 exercise vested options 90 days from the date of termination. The 1

14 14. The Plans provided that a retired employee kept all options granted, even those
15 granted within 6 months prior to termination; all options granted vested 100% on the date of
16 termination; and the exercise date was extended to 3 years from date of termination:

17 (A) immediately upon the cessation of a Participant's employment or other
18 service relationship with the Company and its Affiliates by reason of the
19 Participant's Disability, or with respect to a Participant who is an
20 employee or director of the Company or its Affiliates, by reason of such
21 Participant's Retirement, all Stock Options, SARs and Restricted Stock
22 Awards held by the Participant (or by a permitted transferee under Section
23 4.a (4)) immediately prior to such Disability or, as applicable, Retirement,
24 will become vested and, where exercisability is relevant, will remain
25 exercisable for the lesser of three years or the period ending on the latest
26 date on which such Stock Option or SAR could have been exercised if the
27 Participant's employment or other service relationship with the Company
28 and its Affiliates had continued unchanged, whereupon such Stock

Options and SARs shall terminate; (quote from 2000 Plan)

15. BSC informed participants that, under the 1992 and 1995 plans, retirement was defined by reference to the BSC's retirement and other benefit plans as termination at or after age 62.

16. The confirming agreements for each grant sent to each participant under the 1992 and 1995 Plans did not define retirement.

17. The 2000 Stock Option Plan was presented to BSC shareholders by its Directors in a proxy statement dated April 3, 2000 for suggested adoption at BSC's May 9, 2000 Annual Shareholders Meeting.

18. The first option grant under the 2000 Plan was made May 9, 2000.

19. Under the 2000 Plan, as reflected in proxy statements filed with the SEC, as well as subsequent plans, an employee was considered retired if on date of termination, the employee was over 50 years old, had worked for BSC at least 5 years, and the sum of his age and years of service equaled 62. ("the rule of 62"):

"RETIREMENT": Unless the Administrator expressly provides otherwise, cessation of employment or other service relationship with the Company and its Affiliates if, as of the date of such cessation, (i) the Participant has attained age 50 and has accrued at least five years of service with the Company and its Affiliates, and (ii) the sum of the Participant's age and years of service as of such date equals or exceeds 62.

20. Based upon Plaintiff's knowledge and information as a BSC employee, he alleges that BSC did not inform its employees of the new definition of retirement. It continued to inform them that retirement was defined as age 62 and continued to administer its plans as if the definition had not changed.

21. The confirming agreements for each grant sent to each participant under the 2000 Plan led employees to believe the definition of retirement remained the same:

For purposes of this Agreement, "Retirement" means cessation of employment and other association with the Company and any affiliates or

1 subsidiaries of the Company at or after the normal retirement date
2 specified in the Company's pension or other deferred compensation plan
3 applicable generally to employees of the Company or, with the consent of
4 the Committee, any early retirement date so specified.

5 22. With respect to whether provisions of the Plan or confirming agreements control
6 when in conflict, the confirming agreements provide:

7 In the event of a conflict between any term or provision contained in this
8 Agreement and a term or provision of the Plan, the applicable terms and
9 provisions of the Plan will govern and prevail.

10 23. BSC has failed and refused to provide Mr. Master's with any document reflecting a
11 valid amendment to the 2000 Plan removing the rule of 62 from it or delaying its
12 implementation.

13 24. The BSC 10-K of March 27, 2002 proposes the amendment of the 1992 and 1995
14 plans. It would have been approved by the shareholders in May. The amendment provided that,
15 with respect to options granted after May 7, 2001, retirement status is determined under the rule
16 of 62.

17 25. Plaintiff is informed that in 2004 BSC made a similar retroactive amendment
18 applicable to all previous grants.

19 26. BSC Human Resources personnel have been unwilling or unable and have refused to
20 direct Mr. Masters to any document reflecting that the 2000 Plan was different from or was ever
21 amended to differ from the above described terms. Those terms were reflected in the Plan
22 attached to the company's 2000 proxy statement, as filed with the SEC.

23 VI. FACTS

24 GENERAL EMPLOYMENT

25 27. Mr. Masters began working for BSC in July 1994.

26 28. He was born on January 9, 1942.

27 29. He left BSC's employment on January 12, 2001.

28 9. At that time Mr. Masters had 6.5 years of service with BSC and was 59 years old so

1 that he had more than 5 years of service and the sum of his years of service and age exceeded 62.

2 30. On December 18, 2003, he returned to BSC as a defined term employee.

3 31. On May 3, 2004, he again became a regular, fulltime employee of BSC, which is his
4 present status.

5 32. During his employment with BSC, he received numerous stock option grants
6 discussed below under the 1992, 1995, 2000, and 2003 Plans, both before and after his 2001 - 3
7 leave of absence.

8 33. After he left BSC on January 12, 2001, Mr. Masters received no communications
9 from BSC regarding his options.

10 34. He received no communications from Mellon regarding his options and no
11 communications from BSC regarding Mellon Investor Services ("Mellon") administration of the
12 Plans. Mr. Masters is informed that Mellon formally began administering the Plans shortly after
13 he left BSC.

14 35. He was not a BSC stockholder in 2000 or thereafter so he did not receive proxy
15 statements, annual reports or other reports of shareholder actions, director action, or proposed
16 actions. He had no access to the portions of the BSC website accessible only to shareholders.

17 **VII. FACTS**
18 **NON-EXERCISE OF OPTIONS**

19 36. Based upon the information given him by BSC, Mr. Masters believed that all his
20 options expired 90 days after January 12, 2001. At that time BSC's stock price was such that his
21 pre 2001 options were "underwater" and worthless. He did not exercise them.

22 37. As a result of incorrect information BSC had given to its employees Mr. Masters was
23 unaware that his options were exercisable on January 12, 2004. He therefore made no attempt to
24 exercise them. As is more fully set out below, at that time BSC's stock price was such that the
25 options were worth \$891,248 if exercised. Had he known they were exercisable, he would have
26 exercised them.

27 **VIII. FACTS;**
28 **DISCOVERY OF THE BREACH AND MISREPRESENTATION**

38. In January 2007, Mr. Masters began contemplating eventual retirement and

1 determining his financial position.

2 39. In so doing, he became curious about and checked the status of options granted to
3 him on and after May 2004, when he reentered permanent regular employment with Defendant
4 BSC.

5 40. In early January 2007, he contacted one of BSC's Human Resources officers in Nova
6 Scotia who professed ignorance and directed him to an informational matrix on Mellon's
7 website, which now administers BSC's stock option plans.

8 41. The Mellon Matrix indicated that all Mr. Master's stock options granted prior to his
9 leaving BSC's employment in 2001 terminated 90 days later on April 12, 2001. It included all
10 grants under the 1992, 1995, and 2000 Plans, including the May 9, July 26, and December 6
11 grants under the 2000 Plan.

12 42. In a phone conversation, a Mellon employee informed Mr. Masters that BSC had
13 informed Mellon in 2001 that he was a terminated employee rather than a retired employee and
14 that all his options terminated on April 12, 2001, 90 days after he left BSC employment. He said
15 all Mellon's information was given to it by BSC.

16 43. This 90-day termination rule was consistent with BSC's representations to Mr.
17 Masters and other BSC employees and with Mr. Master's previous understanding from BSC of
18 the rules governing options granted during his first period of employment with BSC.

19 44. However, the nature of the matrix's reference to the rule of 62 was confusing. He
20 wondered if it had affected his pre 2001 option grants.

21 45. On January 16, 2007, Mr. Masters talked to Mr. Tony Ronan, who worked for a
22 Nova Scotia company to which BSC had outsourced some of its Human Resources functions.

23 46. Mr. Ronan stated that on January 12, 2001, Mr. Masters had been eligible for the rule
24 of 62 and should have had 36 months to exercise his options.

25 47. Mr. Ronan stated that Mr. Masters should have been informed by the BSC Human
26 resources Department at termination and have been asked to sign an "understanding of terms"

27 48. Mr. Ronan stated that Mr. Masters should have been given notice by Mellon previous
28 to the expiration of the 36 month exercise period.

1 49. Mr. Ronan expressed his opinion that BSC thought all this was happening.

2 50. Mr. Ronan stated that Mr. Masters had missed his last chance to exercise the option
3 at 36 months and the period could not be extended.

4 51. Mr. Ronan referred Mr. Masters to Dan Bird and Kathleen Shober of the Global
5 Compensation Department.

6 52. On January 19, 2007, Mr. Masters inquired about the options at the office of Ms.
7 Susan Marconi in California. Referring to several one-page documents she held in her hands, she
8 informed him that the rule of 62 did not come into effect until May 2001. She did not provide or
9 show the documents to Mr. Masters.

10 53. Mr. Masters started asking questions. On February 5, 2007, he sent an email
11 requesting clarification to Linda Clifford.

12 54. On February 27, 2007, Dan Bird replied in an email that the rule of 62 had applied to
13 all of Mr. Master's pre 2001 options so that they vested 100% when he left BSC and were
14 exercisable until January 12 2004. He copied Susan Marconi and Linda Clifford. Mr. Bird told
15 Mr. Masters he should have known this; it was his responsibility to know and take appropriate
16 action; and, consequently, there was nothing BSC could do.

17 55. A March 9, 2007 email from Mr. Bird to Mr. Masters did not copy the other parties
18 to the first email exchange. In it Mr. Bird stated that he had made a mistake in the February 27
19 email. Attached to it was a matrix Mr. Bird said was in effect on January 12, 2001. It reflected
20 that the rule of 62 applied only to options granted after May 19, 2001.

21 56. Mr. Masters challenged the purported matrix's authenticity as a 2001 official
22 document because it looked inauthentic, contained no document dates, and included 2004 plan
23 grants.

24 57. Mr. Bird admitted that the matrix was something he had put together himself.

25 58. Mr. Masters then requested his employment records and had several exchanges
26 concerning them with Mr. Michael Lucey of BSC's Fremont office.

27 59. On two occasions, Mr. Lucey informed Mr. Masters that all his pre 2001 options had
28 terminated 90 days after he left BSC.

60. Mr. Masters then began searching BSC SEC filings for information.

61. He discovered that the 2000 BSC stock option plan presented for approval by BSC stockholders in the company's 2000 proxy statement contained the rule of 62, making his options exercisable on 3 years after he left BSC.

62. He confronted Ms. Marconi and Mr. Lucey in an April 3, 2007 email with this information and asked for an explanation.

63. Ms. Marconi responded that she would set up a conference call.

64. He was put off for some time until a conference call was scheduled for April 19, 2007 between him, Kathleen Shober, and Anne Thompson.

65. Mr. Masters requested his attorneys to participate.

66. During the conference call, Kathleen Shober and Thompson claimed that the rule of 62 had not been put into effect because BSC's accounting department or outside financial or accounting consultants had said that to do so would endanger BSC's ability to use the pooling method of accounting for corporate acquisitions and mergers.

67. They said BSC switched to the purchase method of accounting after May 2001, when it began using the rule of 62 for all option grants.

68. They asserted that the definition of retirement for all plans and grants prior to May 2001 was age 62. When asked if this was as stated in the BSC retirement plan, they refused to answer.

69. When asked if there had been any valid action or if any document reflected explicit, valid action by the BSC Board of Directors or any Committee to change the rule of 62 provision in the 2000 plan, they refused identify any document or answer in any way.

IX. FACTS

SPECIFIC OPTION GRANTS

46. On January 12, 2001, BSC Stock closed at \$36.25. Mr. Masters received the following 2000 Plan Options (which are reflected on the Mellon matrix as having expired January 12, 2001) with the following stock split/dividend equivalences, exercise prices, and values as of January 12, 2004 under the 2000 Plan prior to leaving BSC on January 2, 2001:

Grant Date	Split Equivalence of Shares Granted	Exercise Price	Value Of Options
a) May 9, 2000	7000	\$14.156	\$154,658
b) July 25, 2000	7000	\$8.500	\$194,250
c) Dec. 6, 2000	18000	\$6.120	\$542,340
TOTAL			\$891,248

47. He received another grant of 3000 shares under the 2000 Plan on May 3, 2004 after returning to his employment with BSC. Since he is still employed by BSC, that grant is still exercisable and is not in dispute.

48. Mr. Masters received the following 1992 Plan Options with the following current stock split/dividend equivalences under the 2000 Plan prior to leaving BSC on January 2, 2001:

Grant Date	Split Equivalence	
a) Dec. 7, 1999	2220	N/A

49. Mr. Masters received the following 1995 Plan Options with the following stock split/dividend equivalences prior to leaving BSC on January 2, 2001:

Grant Date	Shares Granted	Split Equivalence
a) April 19, 1999	2500	5000
b) May 9, 1996	2000	
c) May 4, 1998		6600
d) May 5, 1997		

IX. FIRST CLAIM FOR RELIEF BREACH OF CONTRACT

50. The allegations of paragraphs 1 through 49 above are reiterated and incorporated herein by reference.

51. BSC's Stock Option Plans, including its 2000 Plan, constitute and are in the nature of contracts with its employees.

52. BSC grants participants the opportunity to later acquire shares at a hoped for favorable price in return for the participants' agreement to pay the exercise price and provide

1 hoped for additional productivity and innovation.

2 53. BSC had and has a contractual duty of good faith, fair dealing, and honesty in
3 fulfilling its contractual obligations under the Plan.

4 54. In misinforming participants with respect to and failing to disclose BSC's contractual
5 obligation to allow exercise of the options within 3 years rather than 90 days of termination, BSC
6 breached its contractual duties.

7 56. But for this contractual breach, Mr. Masters would have exercised his options and
8 gained \$891,248.

9 **X. SECOND CLAIM FOR RELIEF**

10 **BSC's MISREPRESENTATION, FAILURE TO DISCLOSE, OR MISTAKE**

11 57. The allegations of paragraphs 1 through 56 above are reiterated and incorporated
12 herein by reference.

13 58. BSC informed Mr. Masters and other Participants in the 2000 Plan through employee
14 verbal and written communications, the option grant confirmation agreements, other documents,
15 and websites of BSC, Mellon, and others that to be considered retired under the 2000 Stock
16 Option Plan, one must be at least 62 years old, as specified in the Company's Retirement Plan.

17 59. BSC had a duty to properly represent and disclose the Plan's exercise terms.

18 60. But for this misrepresentation, failure to disclose, and/or mistake, Mr. Masters would
19 have exercised his options and gained \$891,248.

20 **XI. THIRD CLAIM FOR RELIEF**

21 **MISREPRESENTATION, FAILURE TO DISCLOSE, OR MISTAKE
22 BY BSC'S OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS**

23 61. The allegations of paragraphs 1 through 60 above are reiterated and incorporated
24 herein by reference.

25 62. BSC's officers, directors, employees, and agents had a duty to properly implement
26 the 2000 Plan and properly represent and disclose the Plan's exercise terms. Some of them were
27 named as Administrators of the Plan.

28 63. As part of their duties, BSC's officers, directors, employees, and agents informed
Mr. Masters and other Participants in the 2000 Plan through employee verbal and written

1 communications, the option grant confirmation agreements, other documents, and websites of
2 BSC, Mellon, and others that to be considered retired under the 2000 Stock Option Plan, one
3 must be at least 62 years old, as specified in the Company's Retirement Plan.

4 64. But for this misrepresentation, failure to disclose, and/or mistake, Mr. Masters would
5 have exercised his options and gained \$891,248.

6 **XI. FOURTH CLAIM FOR RELIEF**
7 **BSC'S FAILURE TO ADMINISTER THE STOCK OPTION PLANS**
8 **WITH PRUDENCE, REASONABLE CARE, AND COMPETENCE**

9 65. The allegations of paragraphs 1 through 64 above are reiterated and incorporated
10 herein by reference.

11 66. In establishing the Long Term Incentive Plans, BSC undertook to, and had an
12 independent duty to, administer the Plan with prudence, reasonable care, and competence.

13 67. Such a standard requires informing participants of the terms of the Plan and their
14 actual exercise rights, their rights thereunder, not misinforming them, and assisting them in
15 safeguarding their rights.

16 68. BSC did not meet this standard.

17 69. But for this failure, imprudence, lack of care, and lack of competence, Mr. Masters
18 would have exercised his options and gained \$891,248.

19 **XII. FIFTH CLAIM FOR RELIEF**
20 **FAILURE OF BSC'S OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS**
21 **TO ADMINISTER THE STOCK OPTION PLANS**
22 **WITH PRUDENCE, REASONABLE CARE, AND COMPETENCE**

23 70. The allegations of paragraphs 1 through 69 above are reiterated and incorporated
24 herein by reference.

25 71. BSC's officers, directors, employees, and agents undertook to, and had an
26 independent duty to, administer the Plan with prudence, reasonable care, and competence. Some
27 of them were named as Administrators of the Plan.

28 72. Such a standard requires informing participants of the terms of the Plan and their
actual exercise rights, their rights thereunder, not misinforming them, and assisting them in
safeguarding their rights.

1 73. BSC's officers, directors, employees, and agents did not meet this standard.

2 74. But for this failure, imprudence, lack of care, and lack of competence, Mr. Masters
3 would have exercised his options and gained \$891,248.

4 **XIII. SIXTH CLAIM FOR RELIEF**
5 **BSC'S BREACH OF FIDUCIARY DUTY TO APPROPRIATELY**
6 **ADMINISTER THE PLANS, DISCLOSE PARTICIPANTS' RIGHTS,**
7 **PREVENT BREACHES AND VIOLATIONS OF THE PLAN**

8 75. The allegations of paragraphs 1 through 74 above are reiterated and incorporated
9 herein by reference.

10 76. BSC's position as long standing employer and Sponsor, of the 2000 Plan and other
11 employee benefits, (as well as its naming some of them as the Plans Administrators) put it in
12 such a position of trust and confidence with all participants and employees, and particularly Mr.
13 Masters, that it owed them a fiduciary duty to appropriately administer the Plan, properly
14 disclose participant's rights, properly disclose the terms and conditions of the 2000 Plan, assist
15 them in exercising and protecting their rights, and prevent breaches and violations of the Plan.

16 77. Its failure to do so was the proximate cause of Mr. Masters' inability to exercise his
17 options.

18 78. But for this failure, and breach of its fiduciary duties,, Mr. Masters would have
19 exercised his options and gained \$891,248.

20 **XIV. SEVENTH CLAIM FOR RELIEF**
21 **BREACH OF FIDUCIARY DUTY TO APPROPRIATELY**
22 **ADMINISTER THE PLANS, DISCLOSE PARTICIPANTS' RIGHTS,**
23 **PREVENT BREACHES AND VIOLATIONS OF THE PLAN**
24 **BY BSC'S OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS**

25 79. The allegations of paragraphs 1 through 78 above are reiterated and incorporated
26 herein by reference.

27 80. BSC's officers, directors, employees, and agents implemented, administered, and
28 conducted its fiduciary acts, responsibilities, and duties on BSC's behalf. Some of them were
named Administrators of the Plan. As such they were also fiduciaries. By exercising fiduciary
acts. power, control, and discretion, they became functional fiduciaries. Their positions of

1 dealing with the Plan and employees on behalf of BSC as long standing employer, and Sponsor,
2 and Administrator of the 2000 Plan and other employee benefits, put it in such a position of trust
3 and confidence with all participants and employees, and particularly Mr. Masters, that it owed
4 them a fiduciary duty to appropriately administer the Plan, properly disclose participant's rights,
5 properly disclose the terms and conditions of the 2000 Plan, assist them in exercising and
6 safeguarding their rights, and prevent breaches and violations of the Plan.

7 81. Their failure to do so was the proximate cause of Mr. Masters' inability to exercise
8 his options.

9 82. But for this failure, and breach of its fiduciary duties, Mr. Masters would have
10 exercised his options and gained \$891,248.

11 **XV. FIRST ALTERNATIVE CLAIM FOR RELIEF**
12 **REINSTATEMENT BECAUSE LEAVE OF ABSENCE**
13 **WAS LESS THAN THREE YEARS**

14 83. The allegations of paragraphs 1 through 82 above are reiterated and incorporated
15 herein by reference.

16 84. Mr. Masters is treated as a continuing employee with 12 years of service for most
17 purposes under BSC's policies. As a continuing employee, he would have the right to exercise
18 his options under the 2000 Plan until 2010. They are now worth approximately \$230,000. Mr.
19 Masters requests reinstatement of the options. Mr. Masters requests that treatment for his
20 options under the 1992 and 1995 Plans as well.

21 **XVI. SECOND ALTERNATIVE CLAIM FOR RELIEF**
22 **BENEFIT OF RETROACTIVE AMENDMENT OF PLAN**

23 85. The allegations of paragraphs 1 through 84 above are reiterated and incorporated
24 herein by reference.

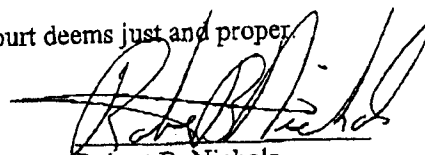
25 86. BSC has retroactively amended its Plans to make the rule of 62 applicable to all
26 grants thereunder, illustrating the intention to provide participants with that benefit.

27 87. Mr. Master's requests the benefit of that amendment for his options under the 2000
28 Plan and those under the 1992 and 1995 Plans as well.

WHEREFORE, plaintiff Donald Masters prays for judgment awarding the

1 following relief:

- 2 1. Damages in the sum of \$1,300,000;
- 3 2. Prejudgment interest at the legal rate of 10% from January 12, 2004;
- 4 3. In the alternative, reinstatement or reformation of the stock option grants to allow for
- 5 exercise through the original 10 year exercise period, which ran from 2000 to 2010;
- 6 4. Plaintiff's attorney's fees incurred herein;
- 7 5. Plaintiff's cost incurred herein;
- 8 6. And such other further relief this court deems just and proper.



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Stephen R. Pappas
Attorneys for Plaintiff
Donald Masters

EXHIBIT B



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 SUPERIOR COURT OF CA
 COUNTY OF SANTA CLARA
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M. Rosales

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF SANTA CLARA

10 DONALD MASTERS,
 11 Plaintiff,

12 vs.

Case No. 107 CV 085180

FIRST AMENDED COMPLAINT

13)
 14)
 15 BOSTON SCIENTIFIC CORPORATION,
 16 BOSTON SCIENTIFIC CORPORATION 2000)
 17 LONG TERM INCENTIVE PLAN and DOES)
 18 1-50,
 19 Defendants.

20 INITIAL COMPLAINT

21 I. JURISDICTION AND PARTIES

22 1. At all times relevant hereto, Plaintiff Donald Masters ("Mr. Masters") has been a
 23 resident of the State of California, County of Santa Clara.

24 2. At all times relevant hereto, Boston Scientific Corporation ("BSC") has been a
 25 Delaware corporation with its principal place of business in Massachusetts.

26 3. The primary Plan at issue in this dispute is the Boston Scientific Corporation 2000
 27 Long Term Incentive Plan. ("2000 Plan" or "2000 Stock Option Plan"). Plaintiff believes the
 28 Plan is not a legal person, but, as a precaution, names it as a party.

1 for which he received credit as the inventor or co-inventor.

2 11. This dispute arises because of the interplay between changes in provisions of BSC's
3 Stock Option Plans and the less than 3 year period between January 2001 and December 2003
4 during which he did not work for BSC.

5
6 **V. FACTS**
GENERAL STOCK OPTION PROVISIONS

7 12. BSC has had at least 4 Stock Option Plans, adopted respectively in 1992, 1995,
8 2000, and 2003. The terms of those Plans and the basis of Mr. Masters's allegations herein are
9 discussed more fully at the end of this complaint. These plans were respectively referred to as
10 Long Term incentive Plans and are denominated by their year of adoption.

11 13. Under the Plans, a terminated employee lost all rights to grants within 6 months prior
12 to termination, lost all rights to options unvested on the date of termination, and lost all rights to
13 exercise vested options 90 days from the date of termination.

14 14. The Plans provided that a retired employee kept all options granted, even those
15 granted within 6 months prior to termination; all options granted vested 100% on the date of
16 termination; and the exercise date was extended to 3 years from date of termination:

17 (A) immediately upon the cessation of a Participant's employment or
18 other service relationship with the Company and its Affiliates by reason
19 of the Participant's Disability, or with respect to a Participant who is an
20 employee or director of the Company or its Affiliates, by reason of such
21 Participant's Retirement, all Stock Options, SARs and Restricted Stock
22 Awards held by the Participant (or by a permitted transferee under Section
23 4.a (4)) immediately prior to such Disability or, as applicable, Retirement,
24 will become vested and, where exercisability is relevant, will remain
25 exercisable for the lesser of three years or the period ending on the latest
26 date on which such Stock Option or SAR could have been exercised if the
27 Participant's employment or other service relationship with the Company
28 and its Affiliates had continued unchanged, whereupon such Stock

Options and SARs shall terminate; (quote from 2000 Plan)

15. BSC informed participants that, under the 1992 and 1995 plans, retirement was defined by reference to the BSC's retirement and other benefit plans as termination at or after age 62.

16. The confirming agreements for each grant sent to each participant under the 1992 and 1995 Plans did not define retirement.

17. The 2000 Stock Option Plan was presented to BSC shareholders by its Directors in a proxy statement dated April 3, 2000 for suggested adoption at BSCs May 9, 2000 Annual Shareholders Meeting.

18. The first option grant under the 2000 Plan was made May 9, 2000.

19. Under the 2000 Plan, as reflected in proxy statements filed with the SEC, as well as subsequent plans, an employee was considered retired if on date of termination, the employee was over 50 years old, had worked for BSC at least 5 years, and the sum of his age and years of service equaled 62. ("the rule of 62");

"RETIREMENT": Unless the Administrator expressly provides otherwise, cessation of employment or other service relationship with the Company and its Affiliates if, as of the date of such cessation, (i) the Participant has attained age 50 and has accrued at least five years of service with the Company and its Affiliates, and (ii) the sum of the Participant's age and years of service as of such date equals or exceeds 62.

20. Based upon Plaintiff/s knowledge and information as a BSC employee, he alleges that BSC did not inform its employees of the new definition of retirement. It continued to inform them that retirement was defined as age 62 and continued to administer its plans as if the definition had not changed.

21. The confirming agreements for each grant sent to each participant under the 2000 Plan led employees to believe the definition of retirement remained the same:

For purposes of this Agreement, "Retirement" means cessation of employment and other association with the Company and any affiliates or

1 subsidiaries of the Company at or after the normal retirement date
2 specified in the Company's pension or other deferred compensation plan
3 applicable generally to employees of the Company or, with the consent of
4 the Committee, any early retirement date so specified.

5 22. With respect to whether provisions of the Plan or confirming agreements control
6 when in conflict, the confirming agreements provide:

7 In the event of a conflict between any term or provision contained in this
8 Agreement and a term or provision of the Plan, the applicable terms and
9 provisions of the Plan will govern and prevail.

10 23. BSC has failed and refused to provide Mr. Masters's with any document reflecting a
11 valid amendment to the 2000 Plan removing the rule of 62 from it or delaying its implementation.

12 24. The BSC 10-K of March 27, 2002 proposes the amendment of the 1992 and 1995
13 plans. It would have been approved by the shareholders in May. The amendment provided that,
14 with respect to options granted after May 7, 2001, retirement status is determined under the rule
15 of 62.

16 25. Plaintiff is informed that in 2004 BSC made a similar retroactive amendment
17 applicable to all previous grants.

18 26. BSC Human Resources personnel have been unwilling or unable and have refused to
19 direct Mr. Masters to any document reflecting that the 2000 Plan was different from or was ever
20 amended to differ from the above described terms. Those terms were reflected in the Plan
21 attached to the company's 2000 proxy statement, as filed with the SEC.

22 **VI. FACTS**
23 **GENERAL EMPLOYMENT**

24 27. Mr. Masters began working for BSC in July 1994.

25 28. He was born on January 9, 1942.

26 29. He left BSC's employment on January 12, 2001.

27 9. At that time Mr. Masters had 6.5 years of service with BSC and was 59 years old so
28 that he had more than 5 years of service and the sum of his years of service and age exceeded 62.

1 30. On December 18, 2003, he returned to BSC as a defined term employee.

2 31. On May 3, 2004, he again became a regular, fulltime employee of BSC, which is his
3 present status.

4 32. During his employment with BSC, he received numerous stock option grants
5 discussed below under the 1992, 1995, 2000, and 2003 Plans, both before and after his 2001 – 3
6 leave of absence.

7 33. After he left BSC on January 12, 2001, Mr. Masters received no communications
8 from BSC regarding his options.

9 34. He received no communications from Mellon regarding his options and no
10 communications from BSC regarding Mellon Investor Services ("Mellon") administration of the
11 Plans. Mr. Masters is informed that Mellon formally began administering the Plans shortly after
12 he left BSC.

13 35. He was not a BSC stockholder in 2000 or thereafter so he did not receive proxy
14 statements, annual reports or other reports of shareholder actions, director action, or proposed
15 actions. He had no access to the portions of the BSC website accessible only to shareholders.

16 **VII. FACTS**
17 **NON-EXERCISE OF OPTIONS**

18 36. Based upon the information given him by BSC, Mr. Masters believed that all his
19 options expired 90 days after January 12, 2001. At that time BSC's stock price was such that his
20 pre 2001 options were "underwater" and worthless. He did not exercise them.

21 37. As a result of incorrect information BSC had given to its employees Mr. Masters was
22 unaware that his options were exercisable on January 12, 2004. He therefore made no attempt to
23 exercise them. As is more fully set out below, at that time BSC's stock price was such that the
24 options were worth \$891,248 if exercised. Had he known they were exercisable, he would have
25 exercised them.

26 **VIII. FACTS;**
27 **DISCOVERY OF THE BREACH AND MISREPRESENTATION**

28 38. In January 2007, Mr. Masters began contemplating eventual retirement and
determining his financial position.

1 39. In so doing, he became curious about and checked the status of options granted to
2 him on and after May 2004, when he reentered permanent regular employment with Defendant
3 BSC.

4 40. In early January 2007, he contacted one of BSC's Human Resources officers in Nova
5 Scotia who professed ignorance and directed him to an informational matrix on Mellon's
6 website, which now administers BSC's stock option plans.

7 41. The Mellon Matrix indicated that all Mr. Masters's stock options granted prior to his
8 leaving BSC's employment in 2001 terminated 90 days later on April 12, 2001. It included all
9 grants under the 1992, 1995, and 2000 Plans, including the May 9, July 26, and December 6
10 grants under the 2000 Plan.

11 42. In a phone conversation, a Mellon employee informed Mr. Masters that BSC had
12 informed Mellon in 2001 that he was a terminated employee rather than a retired employee and
13 that all his options terminated on April 12, 2001, 90 days after he left BSC employment. He said
14 all Mellon's information was given to it by BSC.

15 43. This 90-day termination rule was consistent with BSC's representations to Mr.
16 Masters and other BSC employees and with Mr. Masters's previous understanding from BSC of
17 the rules governing options granted during his first period of employment with BSC.

18 44. However, the nature of the matrix's reference to the rule of 62 was confusing. He
19 wondered if it had affected his pre 2001 option grants.

20 45. On January 16, 2007, Mr. Masters talked to Mr. Tony Ronan, who worked for a
21 Nova Scotia company to which BSC had outsourced some of its Human Resources functions.

22 46. Mr. Ronan stated that on January 12, 2001, Mr. Masters had been eligible for the rule
23 of 62 and should have had 36 months to exercise his options.

24 47. Mr. Ronan stated that Mr. Masters should have been informed by the BSC Human
25 resources Department at termination and have been asked to sign an "understanding of terms"

26 48. Mr. Ronan stated that Mr. Masters should have been given notice by Mellon previous
27 to the expiration of the 36 month exercise period.

28 49. Mr. Ronan expressed his opinion that BSC thought all this was happening.

1 50. Mr. Ronan stated that Mr. Masters had missed his last chance to exercise the option
2 at 36 months and the period could not be extended.

3 51. Mr. Ronan referred Mr. Masters to Dan Bird and Kathleen Shober of the Global
4 Compensation Department.

5 52. On January 19, 2007, Mr. Masters inquired about the options at the office of Ms.
6 Susan Marconi in California. Referring to several one-page documents she held in her hands, she
7 informed him that the rule of 62 did not come into effect until May 2001. She did not provide or
8 show the documents to Mr. Masters.

9 53. Mr. Masters started asking questions. On February 5, 2007, he sent an email
10 requesting clarification to Linda Clifford.

11 54. On February 27, 2007, Dan Bird replied in an email that the rule of 62 had applied to
12 all of Mr. Masters's pre 2001 options so that they vested 100% when he left BSC and were
13 exercisable until January 12 2004. He copied Susan Marconi and Linda Clifford. Mr. Bird told
14 Mr. Masters he should have known this; it was his responsibility to know and take appropriate
15 action; and, consequently, there was nothing BSC could do.

16 55. A March 9, 2007 email from Mr. Bird to Mr. Masters did not copy the other parties
17 to the first email exchange. In it Mr. Bird stated that he had made a mistake in the February 27
18 email. Attached to it was a matrix Mr. Bird said was in effect on January 12, 2001. It reflected
19 that the rule of 62 applied only to options granted after May 19, 2001.

20 56. Mr. Masters challenged the purported matrix's authenticity as a 2001 official
21 document because it looked inauthentic, contained no document dates, and included 2004 plan
22 grants.

23 57. Mr. Bird admitted that the matrix was something he had put together himself.

24 58. Mr. Masters then requested his employment records and had several exchanges
25 concerning them with Mr. Michael Lucey of BSC's Fremont office.

26 59. On two occasions, Mr. Lucey informed Mr. Masters that all his pre 2001 options had
27 terminated 90 days after he left BSC.

28 60. Mr. Masters then began searching BSC SEC filings for information.

61. He discovered that the 2000 BSC stock option plan presented for approval by BSC stockholders in the company's 2000 proxy statement contained the rule of 62, making his options exercisable on 3 years after he left BSC.

62. He confronted Ms. Marconi and Mr. Lucey in an April 3, 2007 email with this information and asked for an explanation.

63. Ms. Marconi responded that she would set up a conference call.

64. He was put off for some time until a conference call was scheduled for April 19, 2007 between him, Kathleen Shober, and Anne Thompson.

65. Mr. Masters requested his attorneys to participate.

66. During the conference call, Kathleen Shober and Thompson claimed that the rule of 62 had not been put into effect because BSC's accounting department or outside financial or accounting consultants had said that to do so would endanger BSC's ability to use the pooling method of accounting for corporate acquisitions and mergers.

67. They said BSC switched to the purchase method of accounting after May 2001, when it began using the rule of 62 for all option grants.

68. They asserted that the definition of retirement for all plans and grants prior to May 2001 was age 62. When asked if this was as stated in the BSC retirement plan, they refused to answer.

69. When asked if there had been any valid action or if any document reflected explicit, valid action by the BSC Board of Directors or any Committee to change the rule of 62 provision in the 2000 plan, they refused identify any document or answer in any way.

IX. FACTS

SPECIFIC OPTION GRANTS

46. On January 12, 2004, BSC Stock closed at \$36.25. Mr. Masters received the following 2000 Plan Options (which are reflected on the Mellon matrix as having expired January 12, 2001) with the following stock split/dividend equivalences, exercise prices, and values as of January 12, 2004 under the 2000 Plan prior to leaving BSC on January 2, 2001:

Grant Date	Split Equivalence of Shares Granted	Exercise Price	Value Of Options
------------	--	----------------	---------------------

1	a) May 9, 2000	7000	\$14.156	\$154,658
2	b) July 25, 2000	7000	\$8.500	\$194,250
3	c) Dec. 6, 2000	18000	\$6.120	\$542,340
4				
5	TOTAL			\$891,248

6 47. He received another grant of 3000 shares under the 2000 Plan on May 3, 2004 after
7 returning to his employment with BSC. Since he is still employed by BSC, that grant is still
8 exercisable and is not in dispute.

9 48. Mr. Masters received the following 1992 Plan Options with the following current
10 stock split/dividend equivalences under the 2000 Plan prior to leaving BSC on January 2, 2001:

11	Grant Date	Split Equivalence	
12	a) Dec. 7, 1999	2220	N/A

13 49. Mr. Masters received the following 1995 Plan Options with the following stock
14 split/dividend equivalences prior to leaving BSC on January 2, 2001:

15	Grant Date	Shares Granted	Split Equivalence
16	a) April 19, 1999	2500	5000
17	b) May 9, 1996	2000	
18	c) May 4, 1998		6600
19	d) May 5, 1997		

20 IX. FIRST CLAIM FOR RELIEF 21 BREACH OF CONTRACT

22 50. The allegations of paragraphs 1 through 49 above are reiterated and incorporated
23 herein by reference.

24 51. BSC's Stock Option Plans, including its 2000 Plan, constitute and are in the nature of
25 contracts with its employees.

26 52. BSC grants participants the opportunity to later acquire shares at a hoped for
27 favorable price in return for the participants' agreement to pay the exercise price and provide
28 hoped for additional productivity and innovation.

1 53. BSC had and has a contractual duty of good faith, fair dealing, and honesty in
2 fulfilling its contractual obligations under the Plan.

3 54. In misinforming participants with respect to and failing to disclose BSC's contractual
4 obligation to allow exercise of the options within 3 years rather than 90 days of termination, BSC
5 breached its contractual duties.

6 56. But for this contractual breach, Mr. Masters would have exercised his options and
7 gained \$891,248.

8 **X. SECOND CLAIM FOR RELIEF**
9 **BSC's MISREPRESENTATION, FAILURE TO DISCLOSE, OR MISTAKE**

10 57. The allegations of paragraphs 1 through 56 above are reiterated and incorporated
11 herein by reference.

12 58. BSC informed Mr. Masters and other Participants in the 2000 Plan through employee
13 verbal and written communications, the option grant confirmation agreements, other documents,
14 and websites of BSC, Mellon, and others that to be considered retired under the 2000 Stock
15 Option Plan, one must be at least 62 years old, as specified in the Company's Retirement Plan.

16 59. BSC had a duty to properly represent and disclose the Plan's exercise terms.

17 60. But for this misrepresentation, failure to disclose, and/or mistake, Mr. Masters would
18 have exercised his options and gained \$891,248.

19 **XI. THIRD CLAIM FOR RELIEF**
20 **MISREPRESENTATION, FAILURE TO DISCLOSE, OR MISTAKE**
21 **BY BSC'S OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS**

22 61. The allegations of paragraphs 1 through 60 above are reiterated and incorporated
23 herein by reference.

24 62. BSC's officers, directors, employees, and agents had a duty to properly implement
25 the 2000 Plan and properly represent and disclose the Plan's exercise terms. Some of them were
26 named as Administrators of the Plan.

27 63. As part of their duties, BSC's officers, directors, employees, and agents informed
28 Mr. Masters and other Participants in the 2000 Plan through employee verbal and written
communications, the option grant confirmation agreements, other documents, and websites of

1 BSC, Mellon, and others that to be considered retired under the 2000 Stock Option Plan, one
2 must be at least 62 years old, as specified in the Company's Retirement Plan.

3 64. But for this misrepresentation, failure to disclose, and/or mistake, Mr. Masters would
4 have exercised his options and gained \$891,248.

5 **XI. FOURTH CLAIM FOR RELIEF**
6 **BSC'S FAILURE TO ADMINISTER THE STOCK OPTION PLANS**
7 **WITH PRUDENCE, REASONABLE CARE, AND COMPETENCE**

8 65. The allegations of paragraphs 1 through 64 above are reiterated and incorporated
9 herein by reference.

10 66. In establishing the Long Term Incentive Plans, BSC undertook to, and had an
11 independent duty to, administer the Plan with prudence, reasonable care, and competence.

12 67. Such a standard requires informing participants of the terms of the Plan and their
13 actual exercise rights, their rights thereunder, not misinforming them, and assisting them in
14 safeguarding their rights.

15 68. BSC did not meet this standard.

16 69. But for this failure, imprudence, lack of care, and lack of competence, Mr. Masters
17 would have exercised his options and gained \$891,248.

18 **XII. FIFTH CLAIM FOR RELIEF**
19 **FAILURE OF BSC'S OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS**
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21 **WITH PRUDENCE, REASONABLE CARE, AND COMPETENCE**

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24 71. BSC's officers, directors, employees, and agents undertook to, and had an
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27 72. Such a standard requires informing participants of the terms of the Plan and their
28 actual exercise rights, their rights thereunder, not misinforming them, and assisting them in
safeguarding their rights.

73. BSC's officers, directors, employees, and agents did not meet this standard.

1 74. But for this failure, imprudence, lack of care, and lack of competence, Mr. Masters
2 would have exercised his options and gained \$891,248.

3 **XIII. SIXTH CLAIM FOR RELIEF**
4 **BSC'S BREACH OF FIDUCIARY DUTY TO APPROPRIATELY**
5 **ADMINISTER THE PLANS, DISCLOSE PARTICIPANTS' RIGHTS,**
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12 owed them a fiduciary duty to appropriately administer the Plan, properly disclose participant's
13 rights, properly disclose the terms and conditions of the 2000 Plan, assist them in exercising and
14 protecting their rights, and prevent breaches and violations of the Plan.

15 77. Its failure to do so was the proximate cause of Mr. Masters's inability to exercise his
16 options.

17 78. But for this failure, and breach of its fiduciary duties,, Mr. Masters would have
18 exercised his options and gained \$891,248.

19 **XIV. SEVENTH CLAIM FOR RELIEF**
20 **BREACH OF FIDUCIARY DUTY TO APPROPRIATELY**
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1 and Administrator of the 2000 Plan and other employee benefits, put them in such a position of
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 11 **REINSTATEMENT BECAUSE LEAVE OF ABSENCE**
 12 **WAS LESS THAN THREE YEARS**

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20 **XVI. SECOND ALTERNATIVE CLAIM FOR RELIEF**
 21 **BENEFIT OF RETROACTIVE AMENDMENT OF PLAN**

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24 86. BSC has retroactively amended its Plans to make the rule of 62 applicable to all
 25 grants thereunder, illustrating the intention to provide participants with that benefit.

26 87. Mr. Masters's requests the benefit of that amendment for his options under the 2000
 27 Plan and those under the 1992 and 1995 Plans as well.

28 **WHEREFORE**, plaintiff Donald Masters prays for judgment awarding the
 following relief:

1. Damages in the sum of \$891,248;

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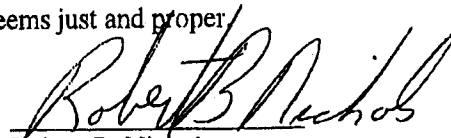
2. Prejudgment interest at the legal rate of 10% from January 12, 2004;

3. In the alternative, reinstatement or reformation of the stock option grants to allow for exercise through the original 10 year exercise period, which ran from 2000 to 2010;

4. Plaintiff's attorney's fees incurred herein;

5. Plaintiff's cost incurred herein;

6. And such other further relief this court deems just and proper



Robert B. Nichols
Stephen R. Pappas
Attorneys for Plaintiff
Donald Masters.

EXHIBIT C

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6 Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA
10

11 DONALD MASTERS,

12 Plaintiff,

13 v.

14 BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC CORPORATION 2000
15 LONG TERM INCENTIVE PLAN, and DOES
1-50,

16 Defendants.
17

Case No. 107CV085180

DEFENDANT BOSTON SCIENTIFIC
CORPORATION'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT

Complaint Filed: May 2, 2007
Trial Date: None Set

18
19 Defendant Boston Scientific Corporation ("Defendant"), which was sued in its
20 own name and incorrectly as "Boston Scientific Corporation 2000 Long Term Incentive Plan,"
21 answers the unverified First Amended Complaint of Plaintiff Donald Masters ("Plaintiff") as
22 follows:

23 **GENERAL DENIAL**

24 Pursuant to California Code of Civil Procedure § 431.30, Defendant generally
25 denies each and every allegation of the First Amended Complaint including, but not limited to,
26 that Plaintiff is entitled to any relief requested, that Defendant is liable for any wrongful conduct
27 or omission, whether alleged or otherwise, and that conduct or omissions of Defendant caused
28 any injury or damages to Plaintiff in the manner or amount alleged, or at all.

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DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

ENDORSED

2007 JUL 19 P 12:14

KERI TORRE, CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA

BY: *[Signature]*
CLERK

1 **AFFIRMATIVE DEFENSES**

2 Further answering, and without assuming the burden of proof not otherwise borne
3 by the answering party, Defendant asserts the following affirmative defenses to the First
4 Amended Complaint:

5 **FIRST AFFIRMATIVE DEFENSE**
6 **(Failure to State a Claim)**

7 The First Amended Complaint fails to state a claim upon which relief may be
8 granted.

9 **SECOND AFFIRMATIVE DEFENSE**
10 **(Improper Venue)**

11 This Court is not the proper venue to adjudicate this action.

12 **THIRD AFFIRMATIVE DEFENSE**
13 **(Uncertainty)**

14 Each of Plaintiff's claims is vague and uncertain.

15 **FOURTH AFFIRMATIVE DEFENSE**
16 **(No Proximate Causation)**

17 Plaintiff's claims are barred because Plaintiff suffered no damages that were
18 proximately caused by, or, in fact, caused by any action or conduct of Defendant.

19 **FIFTH AFFIRMATIVE DEFENSE**
20 **(Negligence of Plaintiff)**

21 Plaintiff's claims are barred because any damages suffered by Plaintiff were
22 proximately caused by Plaintiff's own negligence.

23 **SIXTH AFFIRMATIVE DEFENSE**
24 **(Comparative Fault)**

25 The First Amended Complaint is limited by the doctrine of comparative fault.

26 **SEVENTH AFFIRMATIVE DEFENSE**
27 **(Failure to Mitigate)**

28 The First Amended Complaint, and each of its causes of action are barred either
in whole or in part by Plaintiff's failure to mitigate his damages claimed, if any exist.

EIGHTH AFFIRMATIVE DEFENSE

(Acts of Others)

Each of Plaintiff's claims are barred because Plaintiff's damages, if any, were the result of Plaintiff's own conduct or the acts of third parties.

NINTH AFFIRMATIVE DEFENSE

(Statutes of Limitations)

The First Amended Complaint is barred by each and every applicable statute of limitation including, but not limited to, California Code of Civil Procedure § 338.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

Plaintiff acted with full knowledge and understanding of the circumstances surrounding the matters at issue and freely assumed the risk of loss and/or damage with respect thereto.

ELEVENTH AFFIRMATIVE DEFENSE

(Doctrine of Unclean Hands)

Plaintiff's claims are barred by the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

(Reasonable Care)

Defendant exercised reasonable care and did not know, or in the exercise of reasonable care, could not have known, of any misleading statements, or any omissions of material facts alleged in the First Amended Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Actual or Justifiable Reliance)

Plaintiff's claims are barred from recovery because Plaintiff either did not rely or unjustifiably relied on the representations, action, conduct or omissions of Defendant as alleged in the First Amended Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(Business Judgment Rule)

Plaintiff cannot recover any damages since the alleged acts or omissions attributed to Defendant by the First Amended Complaint are protected by the business judgment rule.

FIFTEENTH AFFIRMATIVE DEFENSE

(Justification)

Each of Plaintiff's claims is barred because Defendant's actions were justified.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Basis for Fraud and Negligent Misrepresentation)

The First Amended Complaint, and each cause of action therein, including but not limited to fraud and negligent misrepresentation, fail because Defendant did not negligently, knowingly or recklessly make any false and misleading statements and/or material omissions to Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Good Faith Action or Omission)

Plaintiff is not entitled to damages because any alleged act or omission by Defendant was in good faith and Defendant had reasonable grounds for believing that its act or omission, if any, was not a violation of any applicable law.

NINETEENTH AFFIRMATIVE DEFENSE

(Good Faith Reliance)

Plaintiff's claims are barred because Defendant acted in good faith conformity with, and reliance on, a written administrative regulation, order, ruling, approval and/or an administrative practice or enforcement policy of those agencies with respect to the class of employer to which Defendant belongs.

TWENTIETH AFFIRMATIVE DEFENSE

(Doctrine of Laches)

Plaintiff's claims are barred by the doctrine of laches.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Privileged Acts)

Each of Plaintiff's claims is barred because Defendant's actions were privileged.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Consent)

Each of Plaintiff's claims are barred because Plaintiff had knowledge of and consented to the acts of Defendant as alleged in the First Amended Complaint, if in fact any such acts occurred.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Duty)

Defendant owed and owes no duty to Plaintiff.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Fiduciary Duty)

Defendant owed and owes no fiduciary duty to Plaintiff.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Damages)

The First Amended Complaint fails to state a cause of action because Plaintiff has not suffered and will not suffer any damages as a result of any action or inaction of Defendant.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Basis for Attorneys' Fees)

The First Amended Complaint fails to state a claim for attorneys' fees as there is no legal basis to award such fees.

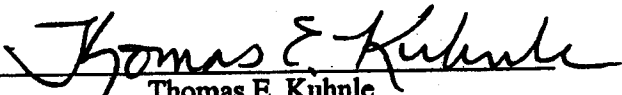
WHEREFORE, Defendant prays for judgment as follows:

1. That the First Amended Complaint, and each and every cause of action contained therein, be dismissed with prejudice and that Plaintiff take nothing by this action;
2. That Defendant be granted its costs of suit herein;
3. That Defendant be granted attorneys' fees; and

4. That the Court grant such other and further relief as is just and proper.

DATED: July 19, 2007

Bingham McCutchen LLP

By: 
Thomas E. Kuhnle
Attorneys for Defendant
BOSTON SCIENTIFIC CORPORATION

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of San Mateo, California at 1900 University Avenue, East Palo Alto, California 94303-2223. I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service and correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

Today I served the attached:

DEFENDANT BOSTON SCIENTIFIC CORPORATION'S
NOTICE OF REMOVAL

by causing a true and correct copy of the above to be placed in the United States Mail at East Palo Alto, California in sealed envelope(s) with postage prepaid, addressed as follows:

Robert B. Nichols
Attorney at Law
300 South First Street, Suite 205
San Jose, CA 95113

Stephen R. Pappas
Attorney at Law
550 S. California Ave., Suite 320
Palo Alto, CA 94306

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 24, 2007.



Mary Maggini